

11IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:04CV182-1-MU

DONTEZ LAMONT SIMUEL,

Plaintiff,

v.

PAULA SMITH, et al.,

Defendants.

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ORDER

THIS MATTER comes before the Court on remand from the United States Court of Appeals for the Fourth Circuit to determine whether Plaintiff satisfies the requirements for an extension of the appeal period under Rule 4(a)(5).

This Court entered Judgment in Plaintiff's civil case on April 5, 2006. Plaintiff filed a Notice of Appeal with this Court on May 19, 2006. At that time, Plaintiff's thirty day time period in which to file a notice of appeal had expired. Rule 4(a)(5) of the Rules of Appellate Procedure, however, provides that a district court may extend the time to file a notice of appeal if a party moves no later than thirty days after the time period prescribed by Rule 4(a) expires and the party shows excusable neglect or good cause.

As noted by the Fourth Circuit, Plaintiff's second notice of appeal and the accompanying declaration was filed within thirty days of the expiration of the time period under Rule 4(a). A review of the record establishes that Plaintiff also satisfies the second requirement of Rule 4(a)(5). Plaintiff first mailed a timely Notice of Appeal to this Court's office in Statesville on

April 26, 2006. This mail was returned to Plaintiff because it was addressed to an old address for that office. This Court concludes that the use of an outdated address constitutes good cause or excusable neglect. Consequently, the Court concludes that Plaintiff satisfies the requirements for an extension as set forth in Rule 4(a)(5).

THEREFORE, IT IS HEREBY ORDERED that Plaintiff's May 19, 2006, Notice of Appeal and declaration satisfies the requirements set forth in Rule 4(a)(5).

Signed: November 29, 2006

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

